

<b>SHD Paraphrased Regulations - Social Services</b> <b>620 IHSS Need Evaluation</b>
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620-1

County services staff shall conduct a needs assessment of applicants and recipients of IHSS. In making this assessment, the services staff shall determine the total amount of hours per week needed for the various services set forth in the program content. (§30-763.2) No need exists for services which the applicant/recipient is able to perform safely, without an unreasonable amount of physical or emotional stress. (§30-761.25)

620-2

The program content of the IHSS Program includes, but is not limited to, housecleaning, laundry, meal preparation and cleanup, bathing, food shopping and errands, bowel and bladder care, dressing, ambulation, feeding, transportation to and from medical providers, and paramedical services. (§30-757)

620-5

When assessing the need for domestic services, the guideline time shall not exceed 6 hours. (§30-758.11)

620-6

Paramedical services are covered under the IHSS Program when the activities involved are those which persons would normally perform for themselves but for their functional limitations and are activities which, due to the recipient's physical or mental condition, are necessary to maintain the recipient's health. The services must be ordered and performed under the direction of a licensed health care professional. The health care professional shall indicate to social services staff the time necessary to perform the ordered services. The services shall be provided by persons who ordinarily provide IHSS. (§30-757.19)

620-7

State law provides that a time-per-task guideline may be used only if appropriate in meeting the individual's particular circumstances. (Welfare and Institutions Code (W&IC) §12301.2) Counties may establish such guidelines for services other than personal care services, meal preparation and cleanup, and paramedical services. (§30-758.2)

620-8

Where laundry services are available in the home, the guideline time shall not exceed 1 hour total per week per household. (§30-758.121)

Laundry services are available in the home if, at a minimum, there exists a washing machine and a capability to dry clothes on the premises. (§30-757.135(a)) Where laundry facilities are not available in the home, the guideline time shall not exceed 1.5 hours total per week per household, which 1.5 hours includes travel time to the laundry facility. (§§30-757.135(b) and 30-758.122)

620-9

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The guideline time for "food shopping" shall not exceed 1 hour per week per household. (§30-758.13) The time for shopping is limited to the nearest available stores or facilities which meet the client's economy and needs; no time is allowable for the recipient to accompany the provider. (§30-757.136)

620-10

The guideline time for "other shopping and errands" shall not exceed .5 hours per week per household. (§30-758.14)

620-11

Exceptions to the guideline times for domestic services, laundry, food shopping, and other shopping and errands can be made when necessary to enable the recipient to establish and maintain an independent living arrangement and/or remain safely in his/her home or abode of choice. (§30-758.4)

620-12

Assistance by the provider is available for transportation when the recipient's presence is required at the destination and such assistance is necessary to accomplish the travel which is limited to transportation to and from appointments with physicians, dentists and other health practitioners or dispensers of medical equipment. Transportation is not available if Medi-Cal will provide the transportation service or if such services are available through alternative resources. (§30-757.15)

620-13

Social services staff shall explore alternative IHSS which may be available from other agencies and programs to meet the needs of the recipient. (§30-763.61)

Pursuant to San Mateo County Superior Court, Stipulation and Order No. 352667, 11/30/90, VA Aid and Attendance payments shall no longer be counted as income or treated as an alternative resource. (*Clift v. McMahon*)

620-13A

Following the *Arp v. Anderson* court case, counties were instructed that services provided by regional centers can no longer be considered an alternative resource under W&IC §12301(a) and MPP §30-763.61. PCSP and IHSS must be granted as though no services are being provided through a Regional Center. Determination of services to be provided must be based strictly on an assessment of the developmentally disabled applicant. (All-County Letter No. 98-53, July 9, 1998; *Arp v. Anderson*, San Diego County Superior Court, No. 711204, Stipulation for Final Judgment, February 18, 1998)

620-13B

State law gives the CDSS the authority, to the extent permitted by federal law, to waive regulations and general policies and make resources available which are necessary for the administration of Welfare & Institutions Code (W&IC) §9560 and following. (W&IC §9562(b))

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Pursuant to this authority, the CDSS has authorized the MSSP to supplement their clients' IHSS awards as follows:

(a) For cases authorized to receive the statutory maxima, there will be no reduction in the authorization of services when the MSSP grants an additional level of services above the IHSS maxima.

(b) For cases assessed at a level less than the maxima, additional hours authorized by the MSSP will not be considered an alternative resource, and IHSS will be authorized at the previously determined need level.

(All-County Letter No. 00-34, May 19, 2000)

**620-14**

Social services staff shall explore with the recipient the willingness of relatives, housemates, friends, or other appropriate persons to provide voluntarily some or all of the services required by the recipient. Social services staff shall not compel any such volunteer to provide services. The social services staff shall document on the needs assessment form the total need for a specific service, which shall then be reduced by any service available from an alternative resource. (§30-763.62)

**620-14A**

If a provider of IHSS or PCSP voluntarily agrees to provide a service or services, the county social services staff shall obtain a statement from the provider that he/she knows of the right to compensation for the provision of the services, but voluntarily chooses to accept no payment or reduced payment. (§§30-575.176 and 30-763.64, effective November 14, 1998, based on *Miller v. Woods/Community Services for the Disabled v. Woods*, San Diego County Superior Court, Nos. 468192 and 472068)

**620-14B**

The voluntary service agreement for IHSS shall contain the following information:

- (1) Services to be performed.
- (2) Recipient's name.
- (3) Case number.
- (4) Day(s) and hour(s) per month service will be performed.
- (5) Provider of services.
- (6) Provider's address and telephone number.
- (7) Provider's signature, and date signed.

(8) Name and signature of Social Service worker.

(§§30-757.176(a), referenced in §30-763.64, both sections effective November 14, 1998)

#### 620-14C

When a need for services is assessed and authorized, then unless certain specified exceptions exist, an individual can legally be paid to perform those services. An individual who could be paid to provide the services can volunteer, and not be paid. But any individual willing to perform authorized services without compensation must complete and sign the Certification form, currently SOC 450. All voluntary service homes are shown as Alternative Resource hours, on form SOC 293.

No Certification form is required when services are provided by an organization, or by an individual willing to provide services that are not compensable.

(All-County Letter No. 00-28, April 25, 2000)

#### 620-15

State law mandates that CDSS develop a uniform needs assessment tool.

The county shall use information as to the recipient's living environment, alternative resources, and the recipient's functional abilities in making its evaluation. (Welfare and Institutions Code (W&IC) §12309)

Under Subsection (d), the recipient's functioning rank shall be based on the following scale:

Rank One: The recipient's functioning is independent, and the recipient does not need human assistance. The recipient may have difficulty in performing the function but there is no substantial safety risk.

Rank Two: The recipient is able to perform the function, but needs verbal assistance.

Rank Three: The recipient can perform the function with some human assistance, such as direct physical assistance from a provider.

Rank Four: The recipient can perform a function but only with substantial human assistance.

Rank Five: The recipient cannot perform the function.

(All-County Letter (ACL) No. 88-118, September 6, 1988, gives further explanations of uniformity assessments. This ACL adds a Rank Six to those listed above, which is used when the recipient needs paramedical services. Regulations implementing and clarifying the statute are contained in §30-756)

620-16

Social services staff shall determine need for services based on the recipient's physical/mental condition, or living/social situation; the recipient's statement of need; the available medical information; and other information social service staff considers necessary and appropriate. (§30-761.26)

Services staff shall determine the need for only those tasks in which the recipient has functional impairments. Recipients must cooperate, within their ability, to secure medical verification of their present condition, their ability to remain in their own homes, and their need for and level of out-of-home care. (§30-763.1)

620-17

When an IHSS recipient lives with a non-IHSS recipient spouse, the following rules apply:

(a) When an IHSS recipient has a spouse who does not receive IHSS, the spouse shall be presumed able to perform certain specified tasks unless he/she provides medical verification of his/her inability to do so.

(b) An able spouse of an IHSS recipient shall be presumed available to perform certain specified tasks except during those times he/she is out of the home for employment, health or for other unavoidable reasons and the service must be provided during his/her absence.

(c) When the recipient has an able and available spouse there shall be no payment to the spouse or any other provider for the following services as described in 30-757:

- (1) Domestic
- (2) Related Services
- (3) Yard Hazard Abatement
- (4) Teaching and Demonstration
- (5) Heavy Cleaning

(d) When the able spouse is not available because of employment, health, or other unavoidable reasons, a provider may be paid for the following services only if they must be provided during the spouse's absence:

- (1) Meal Preparation
- (2) Transportation
- (3) Protective Supervision

(e) An able and available spouse or other provider may be paid for providing:

- (1) Personal Care Services
- (2) Paramedical Service

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(f) In addition to those services listed in (e) above, a spouse may be paid to provide the following services when he/she leaves full-time employment or wishes to seek employment but is prevented from doing so because no other suitable provider is available:

- (1) Transportation
- (2) Protective Supervision

(§30-763.41)

620-18

When the IHSS recipient lives with the live-in provider, the need assessment is conducted as follows:

Domestic and heavy cleaning services shall not be provided in areas used solely by the provider. The need for related services may be prorated if the provider and recipient agree. All other services shall be assessed based on the recipient's individual need, as long as there is only one recipient in the home. (§30-763.47)

620-19

The county shall use a needs assessment and authorization form developed by the CDSS. (§30-761.27) Using the needs assessment form, services staff shall calculate the number of hours per week needed for each of the services that the claimant requires. The form developed by CDSS indicates that the monthly amount of IHSS hours needed is found by multiplying the weekly amount by 4.33 (§30-763.2)

622-1

Net nonexempt income in excess of the applicable SSI/SSP benefit level shall be applied to the cost of IHSS. (§30-755.233)

622-2

Unearned income includes any payments received as an annuity, pension, retirement, disability, Old Age, Survivors and Disability Insurance, unemployment, veterans' or workers' compensation benefits. (§30-775.332)

622-3

There is a disregard for the first \$20 of earned or unearned income per month. (§30-775.433)

622-4

The monthly benefit level for \_\_\_\_ aged or disabled person(s) is \$\_\_\_\_. (§46-120.1)

622-5

Where the correct share of cost was more than the recipient paid, the resulting overpayment is determined by subtracting the amount paid from the correct amount. (§30-768.23)

622-6

Unearned income includes those amounts of countable earned income deemed to be available to the individual from the income of his or her ineligible spouse or parents. The deeming procedures shall conform to those specified in 20 CFR §§416.1165-1166 and as set forth on a form approved by the Department. (§30-775.337)

622-7

The IHSS payment shall be determined by multiplying the monthly adjusted need for IHSS hours by the payment rate used by the county. (§30-764.12)

The base rate of compensation used by the county shall not be less than the legal minimum wage in effect at the time the work is performed. (The minimum wage is \$6.75 per hour as of January 1, 2002.) (§30-764.21)

622-8

Under Assembly Bill (AB) No. 2779, PCSP eligibility was extended to individuals who were not receiving categorical aid payments.

When the individual who is now PCSP eligible has both a Medi-Cal and an IHSS share of cost (SOC), the individual shall not be financially disadvantaged under the state law. If the IHSS SOC is higher, the recipient must meet the lower Medi-Cal SOC. If the Medi-Cal SOC is higher, the recipient must meet the lower IHSS SOC, and the state will pay the amount between the Medi-Cal and the IHSS SOC.

(All County Welfare Directors Letter No. 99-13, March 29, 1999)

625-1

A person who is eligible for a personal care service through PCSP shall not be eligible for that service through IHSS. A service provided by IHSS shall be equal to the level of the same service provided by PCSP. (§30-757.1)

625-2

By September 1, 1993, the California Department of Social Services shall notify Pickle eligible persons, and persons eligible for services under 42 United States Code §1383c(c), they may receive PCSP without an SOC rather than IHSS if they meet other PCSP requirements and agree to accept payment for services in arrears rather than on an advanced basis. (W&IC §14132.95(k))

625-5A

If a provider of IHSS or PCSP voluntarily agrees to provide a service or services, the county social services staff shall obtain a statement from the provider that he/she knows of the right to compensation for the provision of the services, but voluntarily chooses to accept no payment or reduced payment. (§§30-575.176 and 30-763.64, effective November 14, 1998, based on *Miller v. Woods/Community Services for the Disabled v. Woods*, San Diego County Superior Court, Nos. 468192 and 472068)

626-1

The IHSS Program content includes protective supervision. Protective supervision consists of monitoring the behavior of nonself-directing, confused, mentally impaired or mentally ill recipients in order to safeguard the recipient against injury, hazard or accident. Protective supervision is not available when the need is due to a medical condition and the form of supervision required is medical. It is not available in anticipation of a medical emergency. It is not available to prevent or control antisocial or aggressive recipient behavior. (§30-757.171)

Protective supervision is available when social services staff determines that a 24-hour need exists for protective supervision and that the recipient can remain at home safely if protective supervision is provided. Services staff shall determine that the entire 24-hour need for protective supervision can be met through any of the following, or combination of the following: IHSS; alternative resources; or a reassurance phone service when reasonable and appropriate. (§30-757.172)

626-2

The California Court of Appeals ruled that protective supervision for IHSS recipients could be limited to those recipients who were nonself-directing or mentally infirm. (*Marshall v. McMahon* (1993) 22 Cal.Rptr. 2d 220)

626-3

For service authorization purposes, no need for protective supervision exists during periods when a provider is in the home to provide other services. (§30-763.332)

626-4

Protective supervision involves not only the observation of behavior to safeguard the individual against harm, but also the intervention to prevent harm when the individual engages in potentially dangerous conduct. Protective supervision is available to those IHSS beneficiaries who are "nonself-directing" and who would most likely engage in potentially dangerous activities. (*Calderon v. Anderson* (1996) 45 Cal. App. 4th 607, 52 Cal. Rptr. 2d 846)

626-5

The following procedures should be followed when assessing a minor's need for protective supervision in the IHSS program.

- o A county social worker should always assess an IHSS eligible minor for mental functioning. (§§30-756.1, 756.2, 761.261; Welfare & Institutions Code (W&IC) §§12300(d)(4), 12301.1, 12309, (b)(1)(2)(c)) The following shall be used to assess a minor's mental functioning:

- o The county social worker must review a minor's mental functioning on an individualized basis and must not presume a minor of any age has a mental functioning score of "1". (§30-756.372; W&IC §§12301(a), 12301.1)



o A county social worker must assess all eligible minors for a mental impairment. In doing so, the worker must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. A county social worker is not required to independently obtain such information and documentation, but must review any information provided. (§§30-756.31, 756.32, 761.26). For example, is the minor SSI eligible based on mental impairments, or is the minor eligible for regional center services based on mental retardation, autism, or a condition like mental retardation or does the minor need services like someone with mental retardation?

o A county social worker must evaluate a mentally impaired minor in the functions of memory, orientation, and judgment. (§30-756.372)

o A county social worker must advise parents or guardians of a minor with a mental impairment of the conditions for receiving protective supervision, and the availability of that service. (§§30-760.21, 760.23, 760.24; W&IC §§10061, 12301.1, 12309(c)(1))

o A county social worker is not to presume that services, which are otherwise compensable, will be provided voluntarily by a parent or guardian or anyone else in accordance with §30-763.622.

o A county social worker must assess the minor's need for protective supervision under §30-757.17 based on the minor's individual need, if the minor has a mental impairment. (§§30-756.1, 756.2, 761.261; W&IC §§12300(d)(4), 12301.1, 12309(b)(1)(b)(2)(C))

o A county social worker must determine whether a minor needs more supervision because of his/her mental impairments than a minor of the same age without such impairment. (W&IC §12300(d)(4))

o A minor must not be denied protective supervision based solely on age, or solely because the minor has had no injuries at home due to the mental impairment, as long as the minor has the potential for injury by having the physical ability to move about the house (not bedridden). (§§30-761.26, 30-763.1; W&IC §§12300, 12301.1)

o A minor must not be denied protective supervision solely because a parent leaves the child alone for some fixed period of time, like five minutes. (§§30-761.26, 30-760.24, 30-763.1; W&IC §12301.1)

o A county social worker must consider factors such as age, lack of injuries and parental absence, together with the other facts, in determining whether or not a minor needs protective supervision. (W&IC §12301.1)

(These instructions are based on the above-cited state laws and regulations, and the court order in *Lam v. Anderson* and in *Garrett v. Anderson*, San Diego County Superior Court No. 712208, Stipulation for Entry of Final Judgment and Judgment, June 12, 1998 and implemented through All-County Letter (ACL) No. 98-87, October 30, 1998.)

626-5A

If a provider of IHSS or PCSP voluntarily agrees to provide a service or services, the county social services staff shall obtain a statement from the provider that he/she knows of the right to compensation for the provision of the services, but voluntarily chooses to accept no payment or reduced payment. (§§30-575.176 and 30-763.64, effective November 14, 1998, based on *Miller v. Woods/Community Services for the Disabled v. Woods*, San Diego County Superior Court, Nos. 468192 and 472068)

626-5B

The voluntary service agreement for IHSS shall contain the following information:

- (1) Services to be performed.
- (2) Recipient's name.
- (3) Case number.
- (4) Day(s) and hour(s) per month service will be performed.
- (5) Provider of services.
- (6) Provider's address and telephone number.
- (7) Provider's signature, and date signed.
- (8) Name and signature of Social Service worker.

(§§30-757.176(a), referenced in §30-763.64, both sections effective November 14, 1998)

627-1

Under the terms of the *Tyler v. Anderson* settlement agreement, class members (applicants/recipients/providers of IHSS) are to be notified of their right to file a claim for range of motion (ROM) services which were wrongfully denied during the period from June 17, 1990 through March 31, 1994. After being notified of their rights, class members will be given six months to file a claim. Those individuals with valid claims will receive retroactive payments and interest. (All-County Information Notice (ACIN) No. I-99-99, December 22, 1999; *Tyler v. Anderson*, Sacramento County Superior Court No. 376230, Settlement and Entry of Judgment, January 22, 1999)

627-1A

A *Tyler v. Anderson* claimant may be the recipient, applicant, or provider. (§50-026.721)

A claimant has the right to appeal any final decision on a claim, including an award of a smaller payment than was claimed. (§50-026.722, effective January 17, 2001)

627-1B

State regulations provide that a *Tyler v. Anderson* claimant must meet one of the conditions set forth below during the retroactive period to be eligible for a payment.

(a) Recipient claimant: The IHSS recipient was prescribed ROM by a doctor or chiropractor, was not already at the maximum IHSS, and paid the provider for the ROM services.

(b) Provider claimant: The ROM services were provided, but the provider was not paid. The IHSS applicant must have met all categorical and financial IHSS eligibility conditions, and both the IHSS applicant or recipient who received the ROM must have had the ROM prescribed by a chiropractor or doctor, and not have already been at the maximum hourly limit.

(c) Applicant claimant: All categorical and financial eligibility conditions must have been met for IHSS, and the IHSS applicant must have been prescribed ROM by a doctor or chiropractor, and paid the ROM provider.

(§50-026.511, effective January 17, 2001)

627-1C

A *Tyler* notice of action must include "a statement about the taxability of wages, withholding taxes" and deeming for certain IHSS or SSI recipients; and the NOA must include the statement that "there may be a tax liability if sent to an IHSS recipient whose claim is approved. [There is, however, no regulatory statement from the CDSS as to what tax liabilities exist, or whether any deductions should be made for tax liabilities when the payment is issued.] (§§50-026.525(a)(4) and 50-026.525(e); see §§50-026 generally, and 50-026.61 specifically, for confirmation that there is no regulation authorizing deductions of tax liabilities from any *Tyler* payments.)

627-2

The *Tyler v. Anderson* settlement does not apply to applicants, recipients and providers who resided in Amador, Calaveras, Fresno, Los Angeles, San Bernardino, or Tehama County during the period from June 17, 1990 through March 31, 1994 as those counties authorized payment for range of motion exercises. However, those counties may still be required to process applications from current residents who resided in other counties during the affected time period. (All-County Information Notice No. I-99-99, December 22, 1999)

627-3

In order to be eligible for *Tyler v. Anderson* benefits, proof of eligibility for those payments must be established. Eligibility conditions are:

a. A doctor's statement, based on personal knowledge or a review of the applicant's or recipient's medical records, that the IHSS applicant was prescribed range of motion (ROM) exercises, and the monthly hours prescribed during the time period from June 17,

1990 through March 31, 1994.

b. A sworn statement by the applicant, recipient, or provider that ROM services were provided during the relevant time period, and the hours provided monthly.

c. An IHSS applicant must also provide proof of meeting all IHSS categorical and financial eligibility conditions during the relevant period, and a statement that an application was filed during that period.

(*Tyler v. Anderson*, Sacramento County Superior Court No. 376230, Settlement and Entry of Judgment, January 22, 1999, §I, D.(3))

627-4

The computation of retroactive benefits under *Tyler v. Anderson* shall be as follows:

a. Multiply the hours authorized for ROM each month by the county's applicable provider hourly wage.

b. The authorized ROM amount of hours shall not exceed the applicable statutory grant maximum. That maximum is based on the previously authorized hours, plus the retroactive ROM hours, for each month of the period.

c. A share of cost shall be calculated, if appropriate, for applicants using the current SSI/SSP payment standards.

(*Tyler v. Anderson* Judgment, §I D.(4))

In addition to the above calculation, the eligible individual is entitled to prejudgment interest at 7% on the amount of benefits from the date the first payment was owed, and post-judgment interest at 7% on the amount of benefits from January 22, 1999 until the payment(s) is made. (*Tyler*, supra, §I B.(1); §50-026.62, effective 1/17/01)